

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., et al.)	
)	
Defendants.)	
)	

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE EXPERT
TESTIMONY BASED ON BACTERIAL ANALYSES CONDUCTED IN VIOLATION
OF EPA, USGS AND OKLAHOMA STANDARDS (Dkt. No. 2090)**

Exhibit 3



**Environmental
Microbiology
Laboratory, Inc.**

Report for:

Mr. Roger Olsen
CDM (Camp Dresser & McKee, Inc.)
1331 17th Street
Suite 1200
Denver, CO 80202-1562

Regarding: Project: USGS
EML ID: 207278

Date of Analysis: 03-22-2006 and 03-23-2006

Approved by:

A blue ink signature of Dr. Harriet Burge.

Dr. Harriet Burge
Director of Aerobiology

A blue ink signature of Dr. David A. Bell.

Dr. David A. Bell
Laboratory President

This coversheet is included with your report in order to comply with AIHA and ISO accreditation requirements.

For clarity, we report the number of significant digits as calculated; but, due to the nature of this type of biological data, the number of significant digits that is used for interpretation should generally be one or two. All samples were received in acceptable condition unless noted in the Report Comments portion in the body of the report. Due to the nature of the analyses performed, field blank corrections of results is not a standard practice. The results relate only to the items tested.

Environmental Microbiology Laboratory, Inc. ("the Company") shall have no liability to the client or the client's customer with respect to decisions or recommendations made, actions taken or courses of conduct implemented by either the client or the client's customer as a result of or based upon the Test Results. In no event shall the Company be liable to the client with respect to the Test Results except for the Company's own willful misconduct or gross negligence nor shall the Company be liable for incidental or consequential damages or lost profits or revenues to the fullest extent such liability may be disclaimed by law, even if the Company has been advised of the possibility of such damages, lost profits or lost revenues. In no event shall the Company's liability with respect to the Test Results exceed the amount paid to the Company by the client therefor.

Document Number: 200091 - Revision Number: 4

Environmental Microbiology Laboratory, Inc.
 1150 Bayhill Drive, Suite 100, San Bruno, CA 94066
 (650) 829-5800 Fax (650) 829-5852 www.emlab.com

Client: CDM (Camp Dresser & McKee, Inc.)
 C/O: Mr. Roger Olsen
 Re: USGS

Date of Sampling: 03-06-2006
 Date of Receipt: 03-10-2006
 Date of Report: 03-24-2006

MPN REPORT

Location: 1, 07185500 Illinios at Watts

Lab ID-Version‡: 902616-1

Sample size: 1,000		Unit: 100 ml		Percent solid: N/A	
Bacteria	Method	Setup Time	MPN*/Unit	LCL**	UCL**
Fecal Coliform	SM 9221 E	03/10/06 15:08	46	11	190
Total Coliform	SM 9221 B	03/10/06 15:08	240	80	720
E. coli	SM 9221 F	03/10/06 15:08	46	11	190
Staphylococcus aureus	SM 9213 B	03/10/06 15:09	< 2	-	14
Enterococcus group	SM 9230 B	03/10/06 15:03	18	7	48
Salmonella species	BAM 5	03/10/06 15:10	< 2	-	14

Comments:

*MPN - Most Probable Number.

MPN methods:

SM - Standard Methods for the Examination of Waters and Wastewaters, 20th ed. 1998.

FDA BAM - U.S. Food and Drug Administration Bacteriological Analytical Manual, January 2001.

MPN values are calculated using the method of Thomas (1942).

The MPN method was developed to handle samples with a high load of particulate matter, such as turbid waters, soils, wastewaters and sludges. MPN values are statistically derived calculations of viable bacterial density based on the assumptions of random distribution of single, non-clustered, bacteria not attached to particulate matter within a sample. Due to the fact that bacteria can cluster and adhere to materials, values determined by the MPN method should be considered estimates in many instances.

**The Upper 95% Confidence Limit (UCL) and Lower 95% Confidence Limit (LCL) are calculated using the method of deMan (1983) and represent that "before the tubes are inoculated, the chance is at least 95 percent that the confidence interval associated with the eventual result will enclose the actual concentration" (FDA BAM).

Interpretation is left to the company and/or persons who conducted the field work.

‡ A "Version" greater than 1 indicates amended data.

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 C/O: Mr. Roger Olson
 Re: USGS

Date of Sampling: 03-06-2006
 Date of Receipt: 03-10-2006
 Date of Prep: 03-10-2006
 Date of Analysis: 03-13-2006
 Date of Report: 03-24-2006

Bacterial Identification Report

Location:	1: 07185500 Illinios at Watts
Comments (see below)	None
Sample type	Water
	MPN* / unit
<i>Campylobacter</i> species	< 2
Sample size	100 ml
Unit	MPN* / 100ml

*MPN = Most probable number

Comments:

Campylobacter identification method: Modification of BAM chapter 7, March 2001.

Note

1. MPN method: Minimum detection limit for liquid samples is <2MPN/100ml.

Interpretation of results is left to the company/ or persons who conducted the fieldwork.